

110TH CONGRESS
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H. R. 767

To protect, conserve, and restore native fish, wildlife, and their natural habitats at national wildlife refuges through cooperative, incentive-based grants to control, mitigate, and eradicate harmful nonnative species, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 31, 2007

Mr. KIND (for himself, Mr. SAXTON, Mr. THOMPSON of California, Mr. CASTLE, Mr. BOYD of Florida, Mr. McCOTTER, Mr. FORTUÑO, Mr. GILCHREST, Mr. EHLERS, Mr. PAYNE, Mr. ORTIZ, Mrs. NAPOLITANO, and Mr. SHAYS) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To protect, conserve, and restore native fish, wildlife, and their natural habitats at national wildlife refuges through cooperative, incentive-based grants to control, mitigate, and eradicate harmful nonnative species, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Refuge Ecology Pro-
5 tection, Assistance, and Immediate Response Act”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—The Congress finds the following:

3 (1) The National Wildlife Refuge System is the
4 premier land conservation system in the world.

5 (2) Harmful nonnative species are the leading
6 cause of habitat destruction in national wildlife ref-
7 uges.

8 (3) More than 675 known harmful nonnative
9 species are found in the National Wildlife Refuge
10 System.

11 (4) Nearly 8 million acres of the National Wild-
12 life Refuge System contain harmful nonnative spe-
13 cies.

14 (5) The cost of early identification and removal
15 of harmful nonnative species is dramatically lower
16 than removing an established invasive population.

17 (6) The cost of the backlog of harmful non-
18 native species control projects that need to be car-
19 ried out in the National Wildlife Refuge System is
20 over \$250,000,000, and the failure to carry out such
21 projects threatens the ability of the System to fulfill
22 its basic mission.

23 (b) PURPOSE.—The purpose of this Act is to encour-
24 age partnerships among the United States Fish and Wild-
25 life Service, other Federal agencies, States, Indian tribes,
26 and other interests for the following objectives:

1 (1) To protect, enhance, restore, and manage a
2 diversity of habitats for native fish and wildlife re-
3 sources within the National Wildlife Refuge System
4 through control of harmful nonnative species.

5 (2) To promote the development of voluntary
6 State assessments to establish priorities for control-
7 ling harmful nonnative species that threaten or neg-
8 atively impact refuge resources.

9 (3) To promote greater cooperation among Fed-
10 eral, State, and local land and water managers, and
11 owners of private land, water rights, or other inter-
12 ests, to implement ecologically based strategies to
13 eradicate, mitigate, and control harmful nonnative
14 species that threaten or negatively impact refuge re-
15 sources through a voluntary and incentive-based fi-
16 nancial assistance grant program.

17 (4) To establish an immediate response capa-
18 bility to combat incipient harmful nonnative species
19 invasions.

20 **SEC. 3. DEFINITIONS.**

21 For the purposes of this Act:

22 (1) **ADVISORY COMMITTEE.**—The term “Advi-
23 sory Committee” means the Invasive Species Advi-
24 sory Committee established by section 3 of Executive
25 Order 13112, dated February 3, 1999.

1 (2) APPROPRIATE COMMITTEES.—The term
2 “appropriate Committees” means the Committee on
3 Resources of the House of Representatives and the
4 Committee on Environment and Public Works of the
5 Senate.

6 (3) CONTROL.—The term “control” means, as
7 appropriate, eradicating, suppressing, reducing, or
8 managing harmful nonnative species from areas
9 where they are present; taking steps to detect early
10 infestations on at-risk native habitats; and restoring
11 native species and habitats to reduce the effects of
12 harmful nonnative species.

13 (4) ENVIRONMENTAL SOUNDNESS.—The term
14 “environmental soundness” means the extent of in-
15 clusion of methods, efforts, actions, or programs to
16 prevent or control infestations of harmful nonnative
17 species, that—

18 (A) minimize adverse impacts to the struc-
19 ture and function of an ecosystem and adverse
20 effects on nontarget species and ecosystems;
21 and

22 (B) emphasize integrated management
23 techniques.

24 (5) HARMFUL NONNATIVE SPECIES.—The term
25 “harmful nonnative species” means, with respect to

1 a particular ecosystem in a particular region, any
2 species, including its seeds, eggs, spores, or other bi-
3 ological material capable of propagating that species,
4 that is not native to that ecosystem and has a de-
5 monstrable or potentially demonstrable negative en-
6 vironmental or economic impact in that region.

7 (6) INDIAN TRIBE.—The term “Indian tribe”
8 has the meaning given that term in section 4 of the
9 Indian Self-Determination and Education Assistance
10 Act (25 U.S.C. 450b).

11 (7) NATIONAL MANAGEMENT PLAN.—The term
12 “National Management Plan” means the manage-
13 ment plan referred to in section 5 of Executive
14 Order 13112 of February 3, 1999, and entitled
15 “Meeting the Invasive Species Challenge”.

16 (8) REFUGE RESOURCES.—The term “refuge
17 resources” means all lands and waters, including the
18 fish and wildlife species and the ecosystems and
19 habitats therein, that are owned and managed by
20 the Federal Government through the United States
21 Fish and Wildlife Service and located within the Na-
22 tional Wildlife Refuge System administered under
23 the National Wildlife Refuge Administration Act of
24 1966 (16 U.S.C. 668dd et seq.).

1 (9) SECRETARY.—The term “Secretary” means
2 the Secretary of the Interior, acting through the Di-
3 rector of the United States Fish and Wildlife Serv-
4 ice.

5 (10) STATE.—The term “State” means each of
6 the several States of the United States, the District
7 of Columbia, the Commonwealth of Puerto Rico, the
8 Virgin Islands, Guam, American Samoa, the Com-
9 monwealth of the Northern Mariana Islands, any
10 other territory or possession of the United States,
11 and any Indian tribe.

12 **SEC. 4. REFUGE ECOLOGY PROTECTION, ASSISTANCE, AND**
13 **IMMEDIATE RESPONSE (REPAIR) GRANT PRO-**
14 **GRAM.**

15 (a) IN GENERAL.—The Secretary may provide—

16 (1) a grant to any eligible applicant to carry
17 out a qualified control project in accordance with
18 this section; and

19 (2) a grant to any State to carry out an assess-
20 ment project consistent with relevant State plans
21 that have been developed in whole or in part for the
22 conservation of native fish, wildlife, and their habi-
23 tats, and in accordance with this section, to—

1 (A) identify harmful nonnative species that
2 occur in the State that threaten or negatively
3 impact refuge resources;

4 (B) assess the needs to restore, manage, or
5 enhance native fish and wildlife and their nat-
6 ural habitats and processes in the State to com-
7 pliment activities to control, mitigate, or eradi-
8 cate harmful nonnative species negatively im-
9 pacting refuge resources;

10 (C) identify priorities for actions to ad-
11 dress such needs;

12 (D) identify mechanisms to increase capac-
13 ity building in a State or across State lines to
14 conserve and protect native fish and wildlife
15 and their habitats and to detect and control
16 harmful nonnative species that might threaten
17 or negatively impact refuge resources within the
18 State; and

19 (E) incorporate, where applicable, the
20 guidelines of the National Management Plan.

21 The grant program under this section shall be known as
22 the “Refuge Ecology Protection, Assistance, and Imme-
23 diate Response Grant Program” or the “REPAIR Pro-
24 gram”.

25 (b) FUNCTIONS OF THE SECRETARY.—

1 (1) IN GENERAL.—The Secretary shall—

2 (A) publish guidelines for and solicit appli-
3 cations for grants under this section not later
4 than 6 months after the date of enactment of
5 this Act;

6 (B) receive, review, evaluate, and approve
7 applications for grants under this section;

8 (C) consult with the Advisory Committee
9 on the projects proposed for grants under this
10 section, including regarding the scientific merit,
11 technical merit, feasibility, and priority of pro-
12 posed projects for such grants; and

13 (D) consult with the Advisory Committee
14 regarding the development of the database re-
15 quired under subsection (j).

16 (2) DELEGATION OF AUTHORITY.—The Sec-
17 retary may delegate to another Federal instrumen-
18 tality the authority of the Secretary under this sec-
19 tion, other than the authority to approve applica-
20 tions for grants and make grants.

21 (c) FUNCTIONS OF THE ADVISORY COMMITTEE.—

22 The Advisory Committee shall—

23 (1) consult with the Secretary to create criteria
24 and guidelines for grants under this section;

1 (2) consult with the Secretary regarding wheth-
2 er proposed control projects are qualified control
3 projects; and

4 (3) carry out functions relating to monitoring
5 control projects under subsection (j).

6 (d) ELIGIBLE APPLICANT.—To be an eligible appli-
7 cant for purposes of subsection (a)(1), an applicant
8 shall—

9 (1) be a State, local government, interstate or
10 regional agency, or private person;

11 (2) have adequate personnel, funding, and au-
12 thority to carry out and monitor or maintain a con-
13 trol project; and

14 (3) have entered into an agreement with a na-
15 tional wildlife refuge or refuge complex.

16 (e) QUALIFIED CONTROL PROJECT.—

17 (1) IN GENERAL.—To be a qualified control
18 project under this section, a project shall—

19 (A) control harmful nonnative species on
20 the lands or waters on which it is conducted;

21 (B) include a plan for monitoring the
22 project area and maintaining effective control of
23 harmful nonnative species after the completion
24 of the project, that is consistent with standards
25 for monitoring developed under subsection (j);

1 (C) be conducted in partnership with a na-
2 tional wildlife refuge or refuge complex;

3 (D) be conducted on lands or waters, other
4 than national wildlife refuge lands or waters,
5 that, for purposes of carrying out the project,
6 are under the control of the eligible applicant
7 applying for the grant under this section and on
8 adjacent national wildlife refuge lands or waters
9 administered by the United States Fish and
10 Wildlife Service referred to in subparagraph
11 (C), that are—

12 (i) administered for the long-term
13 conservation of such lands and waters and
14 the native fish and wildlife dependent
15 thereon; and

16 (ii) managed to prevent the future re-
17 introduction or dispersal of harmful non-
18 native species from the lands and waters
19 on which the project is carried out; and

20 (E) encourage public notice and outreach
21 on control project activities in the affected com-
22 munity.

23 (2) OTHER FACTORS FOR SELECTION OF
24 PROJECTS.—In ranking qualified control projects,
25 the Director may consider the following:

1 (A) The extent to which a project would
2 address the operational and maintenance back-
3 log attributed to harmful nonnative species on
4 refuge resources.

5 (B) Whether a project will encourage in-
6 creased coordination and cooperation among
7 one or more Federal agencies and State or local
8 government agencies or nongovernmental or
9 other private entities to control harmful non-
10 native species threatening or negatively impact-
11 ing refuge resources.

12 (C) Whether a project fosters public-pri-
13 vate partnerships and uses Federal resources to
14 encourage increased private sector involvement,
15 including consideration of the amount of private
16 funds or in-kind contributions to control harm-
17 ful nonnative species or national wildlife refuge
18 lands or non-Federal lands in proximity to ref-
19 uge resources.

20 (D) The extent to which a project would
21 aid the conservation of species that are listed
22 under the Endangered Species Act of 1973 (16
23 U.S.C. 1531 et seq.).

24 (E) Whether a project includes pilot test-
25 ing or a demonstration of an innovative tech-

1 nology having the potential for improved cost-
2 effectiveness in controlling harmful nonnative
3 species.

4 (F) The extent to which a project con-
5 sider the potential for unintended con-
6 sequences of control methods on ecosystems and
7 includes contingency measures.

8 (f) DISTRIBUTION OF CONTROL GRANT AWARDS.—
9 In making grants for control projects under this section
10 the Secretary shall, to the greatest extent practicable, en-
11 sure—

12 (1) a balance of smaller and larger projects
13 conducted with grants under this section; and

14 (2) an equitable geographic distribution of
15 projects carried out with grants under this section,
16 among all regions and States within which such
17 projects are proposed to be conducted.

18 (g) GRANT DURATION.—

19 (1) IN GENERAL.—Each grant under this sec-
20 tion shall be to provide funding for the Federal
21 share of the cost of a project carried out with the
22 grant for up to 2 fiscal years.

23 (2) RENEWAL.—(A) If the Secretary, after re-
24 viewing the reports under subsection (h) regarding a
25 control project, finds that the project is making sat-

1 isfactory progress, the Secretary may renew a grant
2 under this section for the project for an additional
3 3 fiscal years.

4 (B) The Secretary may renew a grant under
5 this section to implement the monitoring and main-
6 tenance plan required for a control project under
7 subsection (e)(1)(B) for up to 5 fiscal years after
8 the project is otherwise completed.

9 (h) REPORTING BY GRANTEE.—

10 (1) IN GENERAL.—(A) A grantee carrying out
11 a control project with a grant under this section
12 shall report to the Secretary every 24 months or at
13 the expiration of the grant, whichever is of shorter
14 duration.

15 (B) A State carrying out an assessment project
16 with a grant under this section shall submit the as-
17 sessment pursuant to subsection (a)(2) to the Sec-
18 retary no later than 24 months after the date on
19 which the grant is awarded.

20 (2) REPORT CONTENTS.—Each report under
21 this subsection shall include the following informa-
22 tion with respect to each project covered by the re-
23 port:

24 (A) In the case of a control project—

1 (i) the information described in sub-
2 paragraphs (B), (D), and (F) of subsection
3 (k)(2);

4 (ii) specific information on the meth-
5 ods and techniques used to control harmful
6 nonnative species in the project area; and

7 (iii) specific information on the meth-
8 ods and techniques used to restore native
9 fish, wildlife, or their habitats in the
10 project area.

11 (B) A detailed report of the funding for
12 the grant and the expenditures made.

13 (3) INTERIM UPDATE.—Each grantee under
14 subsection (h)(1)(A) of this section shall also submit
15 annually a brief synopsis to the Secretary, either
16 electronically or in writing, that includes—

17 (A) a chronological list of project progress;

18 and

19 (B) use of awarded funds.

20 (i) COST SHARING FOR PROJECTS.—

21 (1) FEDERAL SHARE.—Except as provided in
22 paragraphs (2) and (3), the Federal share of the
23 cost of a project carried out with a grant under this
24 section shall not exceed 75 percent of such cost.

1 (2) INNOVATIVE TECHNOLOGY COSTS.—The
2 Federal share of the incremental additional cost of
3 including in a control project any pilot testing or a
4 demonstration of an innovative technology described
5 in subsection (e)(2)(E) shall be 85 percent.

6 (3) PROJECTS ON REFUGE LANDS OR WA-
7 TERS.—The Federal share of the cost of the portion
8 of a control project funded with a grant under this
9 section that is carried out on national wildlife refuge
10 lands or waters, including the cost of acquisition by
11 the Federal Government of lands or waters for use
12 for such a project, shall be 100 percent.

13 (4) APPLICATION OF IN-KIND CONTRIBU-
14 TIONS.—The Secretary may apply to the non-Fed-
15 eral share of costs of a control project carried out
16 with a grant under this section the fair market value
17 of services or any other form of in-kind contribution
18 to the project made by non-Federal interests that
19 the Secretary determines to be an appropriate con-
20 tribution equivalent to the monetary amount re-
21 quired for the non-Federal share of the activity.

22 (5) DERIVATION OF NON-FEDERAL SHARE.—
23 The non-Federal share of the cost of a control
24 project carried out with a grant under this section

1 may not be derived from a Federal grant program
2 or other Federal funds.

3 (j) MONITORING AND MAINTENANCE OF CONTROL
4 GRANT PROJECTS.—

5 (1) REQUIREMENTS.—The Secretary, in con-
6 sultation with the Advisory Committee, shall develop
7 requirements for the monitoring and maintenance of
8 a control project to ensure that the requirements
9 under subsections (e)(1)(A) and (B) are achieved.

10 (2) DATABASE OF GRANT PROJECT INFORMA-
11 TION.—The Secretary shall develop and maintain an
12 appropriate database of information concerning con-
13 trol projects carried out with grants under this sub-
14 section, including information on project techniques,
15 project completion, monitoring data, and other rel-
16 evant information.

17 (3) USE OF EXISTING PROGRAMS.—The Sec-
18 retary shall use existing programs within the De-
19 partment of the Interior to create and maintain the
20 database required under this subsection.

21 (4) PUBLIC AVAILABILITY.—The Secretary
22 shall make the information collected and maintained
23 under this subsection available to the public.

24 (k) REPORTING BY THE SECRETARY.—

1 (1) IN GENERAL.—The Secretary shall, by not
2 later than 3 years after the date of the enactment
3 of this Act and biennially thereafter in the report
4 under section 8, report to the appropriate Commit-
5 tees on the implementation of this section.

6 (2) REPORT CONTENTS.—A report under para-
7 graph (1) shall include an assessment of—

8 (A) trends in the population size and dis-
9 tribution of harmful nonnative species in the
10 project area for each control project carried out
11 with a grant under this section, and in the ad-
12 jacent areas as defined by the Secretary;

13 (B) data on the number of acres of refuge
14 resources and native fish and wildlife habitat
15 restored, protected, or enhanced under this sec-
16 tion, including descriptions of, and partners in-
17 volved with, control projects selected, in
18 progress, and completed under this section;

19 (C) trends in the population size and dis-
20 tribution of native species in the project areas,
21 and in areas in proximity to refuge resources as
22 defined by the Secretary;

23 (D) an estimate of the long-term success of
24 varying conservation techniques used in car-

1 rying out control projects with grants under
2 this section;

3 (E) an assessment of the status of control
4 projects carried out with grants under this sec-
5 tion, including an accounting of expenditures by
6 the United States Fish and Wildlife Service,
7 State, regional, and local government agencies,
8 and other entities to carry out such projects;

9 (F) a review of the environmental sound-
10 ness of the control projects carried out with
11 grants under this section;

12 (G) a review of efforts made to maintain
13 an appropriate database of grants under this
14 section; and

15 (H) a review of the geographical distribu-
16 tion of Federal money, matching funds, and in-
17 kind contributions for control projects carried
18 out with grants under this section.

19 (I) COOPERATION OF NON-FEDERAL INTERESTS.—
20 The Secretary may not make a grant under this section
21 for a control project on national wildlife refuge lands or
22 lands in proximity to refuge resources before a non-Fed-
23 eral interest has entered into a written agreement with
24 a national wildlife refuge or refuge complex under which
25 the non-Federal interest agrees to—

1 (1) monitor and maintain the control project in
2 accordance with the plan required under subsection
3 (e)(1)(B); and

4 (2) provide any other items of cooperation the
5 Secretary considers necessary to carry out the
6 project.

7 **SEC. 5. CREATION OF AN IMMEDIATE RESPONSE CAPA-**
8 **BILITY TO HARMFUL NONNATIVE SPECIES.**

9 (a) ESTABLISHMENT.—The Secretary may provide fi-
10 nancial assistance for a period of one fiscal year to enable
11 an immediate response to outbreaks of harmful nonnative
12 species that threaten or may negatively impact refuge re-
13 sources that are at a stage at which rapid eradication or
14 control is possible, and ensure eradication or immediate
15 control of the harmful nonnative species.

16 (b) REQUIREMENTS FOR ASSISTANCE.—The Sec-
17 retary shall provide assistance under this section, at the
18 concurrence of the Governor of a State, to local and State
19 agencies or nongovernmental entities for the eradication
20 of an immediate harmful nonnative species threat only
21 if—

22 (1) there is a demonstrated need for the assist-
23 ance;

1 (2) the harmful nonnative species is considered
2 to be an immediate threat to refuge resources, as de-
3 termined by the Secretary; and

4 (3) the proposed response to such threat—

5 (A) is technically feasible; and

6 (B) minimizes adverse impacts to the
7 structure and function of national wildlife ref-
8 uge ecosystems and adverse effects on nontar-
9 get species.

10 (c) AMOUNT OF FINANCIAL ASSISTANCE.—The Sec-
11 retary shall determine the amount of financial assistance
12 to be provided under this section with respect to an out-
13 break of a harmful nonnative species, subject to the avail-
14 ability of appropriations.

15 (d) COST SHARE.—The Federal share of the cost of
16 any activity carried out with assistance under this section
17 may be up to 100 percent.

18 (e) MONITORING AND REPORTING.—The Secretary
19 shall require that persons receiving assistance under this
20 section monitor and report on activities carried out with
21 assistance under this section in accordance with the re-
22 quirements that apply with respect to control projects car-
23 ried out with assistance under section 4.

1 **SEC. 6. COOPERATIVE VOLUNTEER INVASIVES MONI-**
2 **TORING AND CONTROL PROGRAM.**

3 (a) IN GENERAL.—The Secretary shall establish a
4 Cooperative Volunteer Invasives Monitoring and Control
5 Program, under which the United States Fish and Wildlife
6 Service and the United States Geological Survey may work
7 with public interest organizations concerned with national
8 wildlife refuges and volunteers to document and combat
9 invasive species in national wildlife refuges.

10 (b) GRANTS.—Under the program, the Secretary may
11 make grants to persons referred to in subsection (a) for
12 projects to control and manage invasive species in national
13 wildlife refuges and adjacent lands.

14 **SEC. 7. RELATIONSHIP TO OTHER AUTHORITIES.**

15 Nothing in this Act affects authorities, responsibil-
16 ities, obligations, or powers of the Secretary under any
17 other statute.

18 **SEC. 8. BIENNIAL REPORT.**

19 The Secretary shall prepare and submit to the Con-
20 gress by not later than March 20, 2008, and biennially
21 thereafter—

22 (1) a comprehensive report summarizing all
23 grant activities relating to invasive species initiated
24 under this Act including—

25 (A) State assessment projects;

26 (B) qualified control projects; and

1 (C) immediate response activities;
2 (2) a list of grant priorities, ranked in high,
3 medium, and low categories, for future grant activi-
4 ties in the areas of—

5 (A) early detection and rapid response;
6 (B) control, management, and restoration;
7 (C) research and monitoring;
8 (D) information management; and
9 (E) public outreach and partnership ef-
10 forts;

11 (3) a summary detailing progress in addressing
12 operations and maintenance activities specific to
13 invasive species identified in the Refuge Operations
14 Needs database or the Service Asset and Mainte-
15 nance Management System database of the United
16 States Fish and Wildlife Service (or any successor to
17 such a database); and

18 (4) information required to be included under
19 section 4(k).

20 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

21 (a) IN GENERAL.—There are authorized to be appro-
22 priated to carry out this Act such sums as may be nec-
23 essary.

1 (b) CONTINUING AVAILABILITY.—Amounts appro-
2 priated under this Act may remain available until ex-
3 pended.

4 (c) ADMINISTRATIVE EXPENSES.—Of amounts avail-
5 able each fiscal year to carry out this Act, the Secretary
6 may expend not more than 5 percent to pay the adminis-
7 trative expenses necessary to carry out this Act.

○